(1)

Supreme Court, U.S.
FILED

Docket No. 01 480 SEP 19 2001

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 2001

Dennis Landon, pro se,
Petitioner.

v

John G. Ralls and Jeannie Weisensee,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA.

PETITION FOR WRIT OF CERTIORARI

Petitioner, Dennis Landon, pro se
2385-B Somervell St.
Ft. Eustis, VA 23604
757 887-3932

21 pp

QUESTIONS PRESENTED

[1] Can the U. S. Internal Revenue Service (IRS) convey ***valid, legal,*** real property title, (via quit claim deed), to a party; without observing notice requirements as stated in 26 USC Sec. 6335 (a) and (b)?

[2] Can IRS convey ***valid, legal,*** real property title, (via quit claim deed), and (title to property which is Petitioner Landon's principle residence), without ***personal written approval*** of an IRS District Director or Assistant District Director, as required by 26 USC Sec. 6334 (a) (13) and (e)?

[3] Does a 17 month time lapse between alleged seizure and sale of the 2 subject properties violate the ***'as soon as practicable'*** requirement of 26 USC Sec. 6335 (a) and (b)?

[4] Can IRS convey ***valid, legal,*** real property title, to a party, if IRS agent who sold the properties, did not possess the ***duly delegated authority*** to sell the properties?

[5] Is the act of IRS selling Landon's property without first ***actually seizing*** it, a violation of law; and Landon's right to due process?

[6] If IRS violated procedures, (as mandated by the statutes, supra), and if Landon did not receive his jury trial pursuant to Landon v Ralls, infra; were Landon's 5th and 14th Amendment due process rights violated?

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OPINIONS BELOW

The opinion of the Florida First District Court of Appeal, whose judgment is herein sought to be reviewed is unpublished and is reprinted in the separate Appendix to this Petition at page 20. The Case No. is 1D00-4702.

The prior opinion of the Santa Rosa County Florida Circuit Court, First Judicial Circuit, is unpublished, and is reprinted in the separate Appendix to this Petition at page 20. The Case No. is 99-549-CA-01

JURISDICTION

The opinion of the Florida First District Court of Appeals was rendered July 27, 2001. This Court has jurisdiction pursuant to 28 USC Sec. 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const., 5th Amend: 'No person shall be...deprived of life, liberty, or property, without due process of law...'

U.S. Const., 14th Amend., Sec. 1: '...:nor shall any State deprive any person of life, liberty, or property, without due process of law;...'

26 USC Sec. 6334 Property exempt from levy.
(a)(13) Principle residence ***exempt in absence*** of certain approval or jeopardy.

Except to the extent provided in subsection (e), the principle residence of the taxpayer (within the meaning of section 1034).

(e) Levy allowed on principle residence in case of jeopardy or certain approval

Property described in subsection (a) (13) shall not be exempt if-

(1) a district director or assistant district director of the Internal Revenue Service ***personally approves (in writing)*** the levy of such property, or

(2) the Secretary finds that the collection of the tax is in jeopardy

26 USC Sec 6335 Sale of seized property

(a) Notice of seizure

As soon as practicable after seizure of property, notice in writing shall be ***given*** by the Secretary to the owner of the property (or in the case of personal property, the possessor thereof), or shall be left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such district, the notice may be mailed to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property seized and, in case of real property, a description with reasonable certainty of the property seized.

26 USC Sec. 6335

(b) Notice of sale

The Secretary shall ***as soon as practicable*** after seizure of the property ***give*** notice to the owner, in the manner prescribed in subsection (a),...

STATEMENT OF THE CASE

Petitioner Landon will refer to himself in the 3rd person herein.

Prior to June 1994, IRS claimed that Landon owed IRS money for an alleged Federal tax debt. Landon never acknowledged or paid the alleged debt. In response to Landon's failure to pay the alleged debt, IRS sold Landon's property to Respondent Ralls.

In June 1994, IRS conveyed to Ralls, via 2 Quit Claim Deeds, Landon's rights to 2 real properties. One of the properties was Landon's principle residence and homestead.

In June 1994, Ralls filed a Complaint For Ejectment to remove Landon from the properties. Ralls v Landon, 94-1120-CA-01, Santa Rosa County Florida.

In Nov. 1994, Ralls received in his favor a Judgment For Ejectment against Landon to remove Landon from the properties. Four days after the Judgment was rendered, Landon was evicted by the sheriff. Landon appealed, and a year later, the Judgment was reversed, and the reason for the reversal, was because Landon never received a jury trial. See Landon v Ralls, 661 So.2d 361. During the year that Landon was away from the properties, the properties were damaged and rendered uninhabitable; so after the Judgment was reversed, Landon could not return to and inhabit the properties. In Landon's absence, Ralls took possession of the properties and motioned to dismiss his Complaint For Ejectment, using the excuse, that since Landon 'abandoned' the properties, an Ejectment Complaint was moot.

After Ralls took possession of the properties, he sold one of the properties to Respondent Weisensee. In Sept., 1999, the Court dismissed Ralls' Ejectment Complaint in Landon's favor, but never placed Landon back into actual possession. Ralls et al, remain in possession to this day, and Landon never received his jury trial as mandated by Landon v Ralls, 661 So.2d 361.

In Mar. 1999, Landon filed suit to quiet title to the properties; i.e. Landon v Ralls and Weisensee, 99-549. Landon claimed Ralls' IRS Quit Claim Deeds were invalid, Ralls claimed they were valid. Landon lost said case, and the reason given by the Court was: 'there are no disputed issues of fact in this cause'. Landon appealed, and on July 27, 2001, the Appeal Court affirmed that decision. In the Circuit Court and again in the Appeal Court, Landon raised many disputed issues, and many disputed due process issues. Ralls and the Courts ignored the issues.

The only evidence that Ralls et al ever produced to support their claim to the properties were the 2 Quit Claim Deeds from IRS, and a certified copy of an IRS Form entitled 'Record of Seizure and Sale of Realestate'; (henceforth referred to simply as an R21). On June 23, 1999, Weisensee attached a certified copy of the R21 to her Motion For Summary Judgment. On Jan. 20, 2000, her Motion was granted. On Oct. 6, 2000, Ralls attached a certified copy of the same R21 to his Motion For Summary Judgment. On Oct. 26, 2000, his Motion was granted.

Reference Question Presented 1.

At blocks 14 and 15 on the IRS Form R21, (which Respondents themselves submitted), IRS indicated that Notice of Seizure and Notice of Sale were ***mailed*** to Landon. ***Mailing*** notice instead of ***giving*** notices to Landon violates 6335(a) and (b). Ralls et al produced no documentation showing where IRS even *attempted* to locate Landon and serve him personally; or documentation showing why IRS did not leave notices at Landon's residence, (pursuant to 6335(a)); which ***is*** located in the revenue district. Landon raised this 'valid notice issue' in Landon's Complaint To Remove Cloud From Title, R-1, items 35 and 36, V1. Ralls denied the issue in his Answer, (denial thus indicating that there *was* supporting documentation of valid notice delivery), but Ralls never produced the documentation. Additionally, Ralls' Answer was 6 months late, which the Court also ignored.

Landon raised this ***'valid notice issue'*** in the Circuit Court in Landon's [written] Defense Against Ralls' Motion For Summary Judgment, R-272, item 6, V2, (which in turn refers to Landon's [written] Defense To Weisensee's Motion For Summary Judgment, R-156, item 8, V1 to wit:

> "According to the R21, (if the R21 is going to be allowed as evidence), IRS allegedly <u>mailed</u> a Notice of Sale to Landon on 11-30-93, (item 15 of R21). Pursuant to 26 USC Sec. 6335 (a) and (b), the Notice of Sale was supposed to be <u>given</u> to Landon, not mailed. This is an IRS procedure violation (law violation), which invalidates the alleged property sale. See case law cites in item 9 of Landon's [written] Request To Take Judicial Notice, dated July 8, 1999....

Defendants have produced ***no evidence*** to show that Landon was <u>given</u> Notice, consequently, the alleged sale of Landon's property is invalid."

Issue raised in Landon's [written] Request To Take Judicial Notice, R-134, item 9, V1. Issue raised in Landon's Request For Admissions at items 60 > 63, (which Ralls never answered, even after being ordered by the Court to file adequate answers). Issue raised in Landon's [written] Defense Against Ralls' Motion for Summary Judgment, R-272, item 6, V2, which in turn refers to Landon's [written] Defense To Weisensee's Motion For Summary Judgment, R-156, item 4, V1; again on appeal at pages 13, 18c, and 22 of Landon's Initial Brief, again at page 3 of Landon's Reply Brief. The Circuit Court granted Ralls' Motion For Summary Judgment, and Appeal Court affirmed.

Reference Question Presented 2.

Landon raised this ***'written approval issue'*** in Landon's Complaint To Remove Cloud From Title, R-1, item 34, V1; to wit:

"26 USC Sec. 6334 (a)(13), exempts a person's principle residence from levy, but with an exception. The exception is found at 26 USC Sec. 6334 (e), which states in pertinent part:

'Property described in subsection (a)(13) shall not be exempt from levy if- (1) a district director or assistant district director of the IRS ***personally approves (in writing)*** the levy of such property...". Ralls <u>never</u> did produce a document bearing the signature of an IRS district director or assistant district director...".

Landon also produced as Exhibit F to item 34, a Notice of Levy Form showing where the required signature was missing. Ralls denied this issue/allegation in his Answer, (denial thus indicating there *was* a document bearing the signature), but Ralls nor Weisensee ever produced the document. Plus, Ralls' Answer was 6 months late; which the Court also ignored. Issue raised at Landon's [written] Request to take Judicial Notice, R-134, item 6, V1, issue raised in Request For Admissions, items 60-63, (to which Ralls never did file an answer); raised in Landon's Motion For Summary Judgment, R-178, items 3, 4, and 5, V1, raised on appeal, at page 18 of Landon's Initial Brief. The Court denied Landon's Motion for Summary Judgment, and granted Ralls' Motion for Summary Judgment.

Reference Question Presented 3.

Landon raised the **'as soon as practicable'** ***fact issue*** in Circuit Court in Landon's [written] Defense to Ralls' Motion For Summary Judgment, R-272, item 6, V2, which in turn refers to Landon's Defense To Weisensee's Motion For Summary Judgment, R-156, item 7, V1, to wit:

> "According to the R21, ... the property was allegedly seized on 6-11-92, (item 13 of the R21). The property was allegedly sold on 11-30-93, (item 23 of the R21). The length of time between 6-11-92 and 11-30-93 is 17 months. This long time delay between alleged seizure and sale violates 26 USC Sec. 6335 (b) and (d)..."

Landon demanded jury trial on fact issues in his Complaint To Remove Cloud From Title, R-1, page 9, V1, again at Landon's Motion For Rehearing, R-280, items 2, 3, and 4, V2, and many other places in the record. Summary Judgment denied for Landon, granted for Ralls. Issue raised on appeal in Landon's Initial Brief at page 14.

Reference Question Presented 4.

Landon raised the ***'delegation of authority'*** issue in Landon's [written] Defense Against Ralls' Motion For Summary Judgment, R-272, item 2, V2, which in turn, refers to Landon's [written] Request To Take Judicial Notice, R-134, item 13, V1, to wit:

> "Ralls' Quit Claim Deeds from IRS do not meet the requirements of 26 USC Sec. 6338 (b). Take Judicial Notice of items 28 and 32 of Landon's Complaint. IE: Ralls' Quit Claim Deeds from IRS do not cite a judgment and execution out of a circuit court. Ralls' Quit Claim Deed does not name the officer who allegedly sold the properties, nor do the Quit Claim Deeds recite a ***Delegation of Authority statement,*** which would show that the officer making the alleged sale, actually possessed the authority to sell the properties. See also 85 CJS, Sec. 951, Taxation, 3rd. para. at: "Tax deed from state...".

Summary Judgment granted for Ralls. Issue raised in Request For Admissions at item 19, (to which Ralls never adequately answered); raised on appeal in Landon's Initial Brief, pages 10 and 19.

Reference Question Presented 5.

Landon raised this ***'alleged seizure issue'*** in Landon's [written] Defense To Weisensee's Motion For Summary Judgment, R-156, item 1, V1, and Exhibits A and B of R-156 to wit:

> "According to Weisensse's Exhibit A, which is entitled [IRS] Record of Seizure and Sale of Realestate, (R21), item 13 shows a 'Date property seized' as 6-11-92... .

Defendants have produced ***no evidence*** to show that a property seizure ever took place; and, if a property seizure did take place, if the seizure was pursuant to law. The attached affidavits attest to the fact that Landon, (not IRS), was in control and actual possession of the subject properties; before, at, and after, the date IRS *allegedly seized* the properties. This possession issue, fact issue, is in direct conflict with Weisensee's contention in item 2 of her Motion".

Summary Judgment granted for Weisensee. Issue raised on appeal in Landon's Initial Brief at page 19, and in Landon's Reply Brief at pages 3 and 4.

Reference Question Presented 6.

Landon raised the ***'due process issue'*** in Landon's [written] Defense To Ralls Motion For Summary Judgment, R-272, item 6, V2, which in turn refers to Landon's [written] Defense To Weisensee's Motion For Summary Judgment, R-156, item 2, V1, to wit:

"To presume Ralls' Quit Claim Deeds from IRS are conclusive evidence of a valid property conveyance, is a blatant denial of Landon's right to *due process*. Ralls' Quit Claim Deeds are invalid, and cannot operate as a valid property conveyance, as a matter of law."

Summary Judgment was granted for Ralls. Issue raised on appeal in Landon's Initial Brief, page 12, and in Landon's Reply Brief, page 7.

REASONS FOR GRANTING THE WRIT

The Circuit Court opined: "there are no disputed issues of fact in this cause"; and the Appeal Court affirmed. That opinion is totally wrong because the disputed issues are clear; and many; and there are ***no*** stipulated issues in this cause.

Reference Question Presented 1.

The issue here is the *method* of notice delivery to Landon. Ralls et al contended that ***mailing*** notice was sufficient. This contention is evidenced by Ralls et al, submitting to the Court, the IRS Form R21 that shows notices were *mailed.* Conversely, Landon contended, that in this situation, (in the Case at bar), that *mailing* notice is not sufficient, and that ***'personal'*** service of notice was required. Substantial case law supports Landon's contention. Ralls and Lower Courts ignored the issue.

"The legitimacy of allowing the government to seize and sell property prior to adjudication, however, has long been recognized to depend on ***strict compliance*** by government officials with procedures prescribed by law. As Chief John Marshall stated:

'That no individual or public officer can sell, and convey a good title to, the land of another, unless authorized so to do by express law, is one of those self-evident propositions to which the mind assents, without hesitation; and that the person invested with such power must pursue ***with precision*** the course prescribed by law, ***or his act is invalid***, is a principle which has been repeatedly recognized in this court.' Thatcher v Powell, 19 U.S. (6 Wheat) 119, 125, 5 L. Ed. 221 (1821). Thus, '[t]he general rule is that ***strict compliance*** with

statutory provisions is required to validate tax sales'. Johnson v Gartlan, 470, F.2d 1104, 1106 (4th Cir) (absent ratification by the taxpayer, sale is voidable where IRS has failed to comply with Sec. 6335), cert. denied, 38 L. Ed.2d 85... see also Reece v Scoggins, 506 F.2d 967, 970-71 (5th Cir. 1975)...". Kulawy v U.S., 917 F.2d 729, para. [6], U.S. Ct. of App., 2nd Cir.

Respondents themselves produced the IRS Form R21 that shows IRS violated procedures.

"Fear that taxpayer is too dangerous to be approached individually isn't permissible reason to fail to deliver notice of sale to taxpayer ***in person*** or to home or place of business. So IRS's *mailing* of notice to taxpayer they considered dangerous wasn't valid notice of sale." [note 2] Martin v Rubel. R-156, item 8, V1.

"This case involves a procedural failure by the IRS indistinguishable from that which occurred in Goodwin. [and Landon]. *There is* ***no evidence in the record*** *that Martin could not 'be readily located, or [had] no dwelling or place of business within [the Internal Revenue] district'.* 26 USC Sec. 6335 (a). In fact, according to the IRS Seizure Activity Report Data sheet attached to Martin's brief, it appears that notice was *mailed* to Martin 'because of his isolation, he should [not] [sic] be approached in person (danger to IRS employees), and he does sign for cert. mail'. Under the clear language of the statute, these are not permissible reasons for failing to deliver notice to Martin ***in person*** or to his home or place of business. Accordingly, as between Martin and the government, the seizure and sale of Martin's property was ***invalid"***. Martin v Rubel, 73 AFTR 2d 94-1762, U.S. Ct. of Appeals, 9th Cir.

Respondents themselves produced the IRS Form R21 that shows IRS allegedly ***mailed*** the notices to Landon; which violates 26 USC, Sec. 6335 (a) and (b); and Respondents produced ***no evidence*** to show where IRS even *attempted* any other form of notice delivery to Landon. Clearly, the statute, and Landon's rights to due process, were violated; and Ralls' 'Deeds' are invalid.

Reference Question Presented 2.

The disputed issue is clear. Landon contended ***written approval*** to sell Landon's principle residence is *required*. Ralls submitted no written approval, and Courts ignored the issue.

26 USC, Sec. 6334 (a) (13) and (e) is clear. Landon's principle residence is ***exempt from levy, unless*** such levy is first approved ***personally, in writing***, by an IRS District Director or Assistant District Director. Ralls et al, never produced the required personal written approval, nor did they produce IRS documentation showing that 'collection of the tax is in jeopardy'; consequently, Landon's principle residence is ***exempt*** from levy.

> "Burden of showing ***literal compliance*** with statues governing sale of land for taxes is upon ***claimant*** under the tax sale. 26 USCA, Sec. 6335." Kelly v Lunding, 475 N.E.2d 1093, at para. [4]. R-134, item14

Reference Question Presented 3.

The disputed issue here is the 17 month time delay between alleged seizure of the properties, and sale of the properties.

Landon said 17 months is too long and is not ***'as soon as practicable'***; and violates 26 USC Sec. 6335 (a) and (b). Ralls and Courts ignored the issue.

26 USC, Sec. 6335 (a) and (b) requires the sale of property to be performed ***as soon as practicable*** after seizure. The R21, which Ralls submitted, indicates 17 months between seizure and sale.

> "*As soon as practicable* means as soon as reasonably practicable under the circumstances of the case. This is a question of ***fact*** and not one of law *unless* the length of time is so long as to preclude dispute." Cox v Sigley, Pa.. 39 Wash. Co. 115, 118. R-156, item 7, V1.

Anyone who has ever acquired a developed, useable property, with the intent to immediately resell the property, knows it doesn't take 17 months. Ralls et al, produced ***no evidence*** to show that a 17 month time delay was 'as soon as practicable'. Also, what is, and what is not, *'as soon as practicable'* is a ***fact issue***; and Landon demanded a jury trial. R-156, items 7 and 8, V1.

Landon's property was allegedly seized on 6-11-92, when his alleged tax bill was 63K (+-). Instead of selling the properties immediately after alleged seizure, it appears IRS purposely waited for the alleged bill to grow, with penalties, and interest accruing, to an amount at which IRS thought they could sell the properties. In Nov. 1993, with the alleged bill at 97K (+-), IRS sold the properties to Ralls for 99K;.. imagine that !

Reference Question Presented 4.

The disputed issue here is whether or not IRS agent Boyington had ***delegated authority*** to sell the properties.

Ralls and the Lower Courts ignored the issue.

Ralls et al, produced no documentation, showing where revenue agent Boyington possessed the *delegated authority* to sell Landon's property. Following is an example of the necessity of *'delegated authority'*.

> "[T]he authority to settle disputes involving unpaid liability over $100,000.00 is granted ***only*** to IRS Regional Commissioners and Regional Counsel. ***Delegation Order*** 11 (Rev. 13), 1982-1 Cum. Bull. 333. Thus, even if the District Director had signed the letter and intended to accept Frank's offer of compromise, the acceptance would been ***ineffective***." Cites omitted. Brooks v U.S., 833 F.2d 1136, paragraph [5,6], U.S. Ct. of Appeals, (4th Cir, 1987). See also Kulawy, supra.

To conclusively presume that agent Boyington possessed the *delegated authority* to sell Landon's property, (which the lower courts did), is a denial of Landon's due process rights.

> "If any question of fact or liability be conclusively presumed against him, this is not due process of law." Due process of law, Blacks Law Dictionary, 6th Edition.

Reference Question Presented 5.

The disputed issue here is ***if*** IRS can *legally* sell properties that IRS never did ***actually*** seize, without violating Landon's right to due process. Landon contended IRS could not. Ralls and Court ignored the issue.

According to the R21, the date the property was allegedly seized was 6-11-92. The *undisputed fact* is that Landon

lived at and controlled the properties from 1988 until Nov. 14, 1994, the day Landon was evicted pursuant to Ralls v Landon.

IRS never pad locked the properties, posted signs on the properties, or exerted any kind of control over the properties whatsoever. R-156, item 1, V1.

> "A levy requires that property be brought into legal custody through seizure, actual or constructive, levy being an absolute appropriation in law of the property levied on, and mere notice is *insufficient*." U.S. v O' Dell, 160 F.2d 304, para. [2].

IRS never seized the properties, it follows, IRS cannot legally sell properties they do not own or control. To presume so, is a denial of Landon's due process rights.

CONCLUSION

The ***only*** evidence that Respondents ***ever*** presented to support their IRS Quit Claim Deeds was the certified copy of the IRS Form R21; and the R21 shows the ***undisputed facts*** exactly where IRS violated procedures, and consequently violated Landon's due process rights. Further, Ralls never did answer the 75 admissions, (even after the Court ordered him to answer), Landon was not allowed to complete discovery, and Landon was denied his jury trial rights on possession issues and fact issues.

In this Case, there has been no remedy at law, nor in equity, and no due process, for Landon. For the reasons stated in this Petition, this Court should grant the Writ.

Dennis Landon, pro se; 2385-B Somervell St., Ft. Eustis, VA 23604 757 887 3932

APPENDIX

OPINIONS BELOW

District Court of Appeal, First District, Florida
Case Landon v Ralls, et al, 1D00-4702
Opinion of the Appeal Court, July 27, 2001
'Affirmed'

Santa Rosa County Florida Circuit Court, First Circuit
Case Landon v Ralls, et al, 99-549

Summary Judgment for Ralls, Oct. 24, 2000.

Order Denying Landon's Motion For Summary Judgment and Granting Ralls Motion For Summary Judgment
[in pertinent part]

"This matter is before the Court on Landon's Motion for summary Judgment and Ralls' Motion for Summary Judgment. This court has reviewed the documents in evidence from both sides including those items of which the Court has taken Judicial notice... . The evidence presented by Landon in his Motion for Summary Judgment did not raise disputed issues of the fact in this cause. It is therefore, ordered and adjudged, that Landon's Motion For Summary Judgment is hereby denied, and Ralls' Motion For Summary Judgment on his Counter-claims and Cross-claim are hereby granted... ."

Final Judgment As To Landon v Ralls, Oct. 24, 2000
[in pertinent part]

"This matter having come before the Court on John Ralls Motion for Summary Final Judgment and by Order dated Oct. 24, 2000, the Court having granted Ralls' Motion for Summary Judgment on his Counter-claim/Cross-Claim to Quiet Tax Title, as there are no disputed issues of fact in this cause, it is therefore ordered and Adjudged, Title to the following described real property located in Santa Rosa County, Florida vests in John G Ralls, pursuant to and by virtue of a Deed of Real Estate from the Internal Revenue Service to John G. Ralls dated June 6, 1994,..."

Related Case:

Santa Rosa County Florida Circuit Court, First Circuit
Ralls v Landon, 94-1120-CA-01
(Ralls' Ejectment Complaint to remove Landon from the properties)

Amended Final Judgment of Dismissal, Sept. 17, 1999
[in pertinent part]

"Ordered and adjudged that the Plaintiffs [Ralls'] Complaint of Ejectment is dismissed, and Plaintiff shall take nothing by this action and Defendant shall go hence without day."

[Ralls lost Case 94-1120-CA-01, but he and Weisensee remain in possession of the properties to this day.]

OPPOSITION

BRIEF

Supreme Court, U.S.
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No. 01-480

In The

Supreme Court of the United States

DENNIS LANDON, *Pro se*,

Petitioner,

v.

JOHN G. RALLS,

Respondent.

On Petition For Writ Of Certiorari To The District Court Of Appeal, First District, State Of Florida

BRIEF IN OPPOSITION

VINCENT J. WHIBBS, JR.
SUZANNE N. WHIBBS
Counsel of Record
WHIBBS, WHIBBS & JOHNSON, P.A.
105 E. Gregory Square
Pensacola, FL 32501
(850) 434-5395

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

The real issue, which was the subject of the appeal to the First District Court of Appeals for the State of Florida was whether the First District Court of Appeals should uphold Santa Rosa County, Florida Circuit Court's decision granting Respondent Ralls' Motion for Summary Judgment to Quiet Title in real property located in Santa Rosa County, Florida. The Petitioner Landon erroneously tries to invoke this Honorable Court's jurisdiction by raising Constitutional and Federal law claims, which were not the subject of the lower court's determination. The questions presented by Petitioner Landon are allegations against the Internal Revenue Service which should be addressed in federal court. However, Petitioner Landon has failed to initiate a case in federal court against the Internal Revenue Service. Furthermore, the Internal Revenue Service was not a party to the underlying lawsuit filed by Petitioner Landon.

Petitioner Landon has filed numerous frivolous and non-meritorious lawsuits in Florida state courts against Respondent Ralls and other defendants. In each of those cases, which are not the subject of this appeal, the case has been dismissed with instructions from the Judges that Petitioner Landon's cause of action or claim is and has been against the Internal Revenue Service in Federal Court and not in state court. However, Petitioner Landon has ignored the orders of the trial courts and has continued to pursue lawsuits against Respondent Ralls and others on matters concerning a Tax Deed issued by the Internal Revenue Service in 1994.

QUESTION PRESENTED – Continued

Petitioner Landon incorrectly states six (6) separate questions for this Honorable Court to determine, which do not relate to the issues that were before the trial court or the First District Court of Appeals for the State of Florida. In each of the six (6) questions presented by the Petitioner, he refers to the legality and validity of actions by the Internal Revenue Service. The Internal Revenue Service was not named a Defendant in Petitioner Landon's underlying lawsuit. Petitioner has never instituted legal action against the Internal Revenue Service in federal court. Therefore, the six (6) questions presented by Petitioner Landon are not issues properly before this Court.

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STATEMENT OF THE CASE

Petitioner Landon seeks a writ of certiorari from the District Court of Appeals, First District, State of Florida, in which the court upheld a final judgment to quiet title of the Circuit Court in and for Santa Rosa County, Florida entered on October 24, 2000 in favor of Respondent. The circuit court's final judgment granted Respondent Ralls' Motion for Summary Judgment as to his Counter-Claim/ Cross-Claim to Quiet Tax Title against Petitioner. The final judgment vested the subject property of the lawsuit in Respondent and ordered that all rights, title, and interest of Petitioner be forever quieted.

As background facts of this case, on June 6, 1994, the Internal Revenue Service, through a Deed of Real Estate, conveyed the property which is the subject of this writ to Respondent, which deed was recorded in Official Records Book 1421 at Page 1259, of the public records of Santa Rosa County, Florida. Prior to the issuance of the Deed of Real Estate, the Internal Revenue Service levied and seized the property in satisfaction of unpaid federal income taxes.

Along with several other actions filed by Petitioner Landon in the Circuit Court in and for Santa Rosa County, Florida, which are not subject to this writ, the Petitioner Landon filed the current action on or about March 18, 1999, to Remove Cloud from Title against Respondent Ralls and two other defendants, who are not part of this appeal. Petitioner Landon, in his complaint, alleges that he refused to pay the tax debt owed to the federal government; that the Internal Revenue Service unlawfully sold his properties to satisfy such debt; that

Landon did not redeem the property after the tax deeds were issued; and that the Internal Revenue Service issued Respondent Ralls a Deed of Real Estate. The Complaint requests that the lower court protect Petitioner Landon's homestead rights (even though Petitioner currently, and has for several years, resides in Fort Eustis, Virginia), to order the named Defendants to quit claim the subject properties to Petitioner Landon, to pay Petitioner Landon for repairs to the property, to pay all real estate taxes and liens that encumber the properties, and to pay Petitioner Landon all costs, legal expenses and other expenses associated with bringing the action.

On or about October 9, 2000, Respondent Ralls filed a Counter-Claim/Cross-Claim to Quiet Title against Petitioner Landon. Respondent Ralls requested that the lower court award fee simple title of the subject real property to Respondent Ralls; that all rights, title, and interest of Petitioner Landon be forever quieted; and that Petitioner Landon be enjoined from asserting any right, title, claim, or interest in the subject real property.

On October 9, 2000, Petitioner Landon filed his Motion for Summary Judgment and Notice to Take Judicial Notice of the United States Department of the Treasury Internal Revenue Service Record of Seizure and Sale. On or about October 26, 2000, the trial court granted Respondent Ralls' Motion for Summary Judgment and entered a Final Judgment as to *Landon v. Ralls*. The trial court denied Petitioner Landon's Motion for Summary Judgment.

Respondent Ralls opposes Petitioner Landon's statement of the case and other facts cited in his writ as the

facts are unrelated to the subject matter of this appeal. Respondent Ralls further opposes Petitioner Landon's statement of the case and other facts cited in his petition for writ of certiorari as Petitioner Landon raises prior cases filed in state court and their final judgments, although those cases and final judgments are not the subject of this appeal.

REASONS DENYING WRIT

A. The United States Supreme Court may lack Jurisdiction

Petitioner Landon requests this Court for a Writ of Certiorari pursuant to 28 U.S.C. Section 1257(a). 28 U.S.C. Section 1257(a) specifically states:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question of the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or status of, or any commission held or authority exercised under, the United States."

Respondent Ralls believes this Honorable Court lacks jurisdiction for several reasons. There is no basis for jurisdiction because there has not been a final judgment or decree rendered by the highest court in the State of

Florida and there is no federal question or constitutional issue on which the lower decision was made.

First, Petitioner Landon filed his Petition for Writ of Certiorari from the First District Court of Appeals for the State of Florida. The First District Court of Appeals of the State of Florida is not the highest court of the State of Florida. The United States Supreme Court's jurisdiction to review state court decisions is generally limited to final judgment rendered by the highest court of the state in which the decision may be had. *Flynt v. Ohio,* 101 S.Ct. 1958. The requirement that a final judgment or decree be rendered by the highest court of state before the Supreme Court may intervene in state litigation is not a mere technicality, to be easily scorned, but an important fact in the smooth working of our federal system. *Montgomery Bldg. & Const. Trades Council v. Ledbetter Erection Co.,* 344 U.S. 178.

Second, Petitioner Landon erroneously argues throughout his Petition for Writ of Certiorari that the trial court and Respondent Ralls violated federal statutes and constitutional rights in granting Respondent Ralls' Motion for Summary Judgment to Quiet Title to real property located in Santa Rosa County, Florida. However, Petitioner Landon's initial complaint to remove cloud from title did not involve or require review of federal statutes and constitutional issues. The federal statutes and constitutional issues raised by Petitioner Landon involves claims he has against the Internal Revenue Service dating back to 1994 when the IRS seized his property and sold his property pursuant to a Tax Deed. However, Petitioner Landon has never initiated a formal complaint in federal court against the IRS questioning the propriety

of taking his property much less alleging claims of the method and manner in which the sale took place. Petitioner Landon continuously makes his alleged claims he has against the actions of the IRS against the innocent purchasers of the Tax Deeds instead of against the government itself.

Neither the First District Court of Appeals' actual ruling, nor the record below, raises the questions presented by the Petition. The ruling is not in conflict with any federal statute or any U.S. constitutional issues. Petitioner Landon has attempted to make a "federal case" out of a state cause of action of quieting title to real property in the state of Florida. Petitioner Landon has further attempted to make a "federal case" without suing the appropriate parties in the appropriate court. The First District Court of Appeals' ruling was proper in all respects and Respondent Ralls respectfully urges this Honorable Court to deny the Petition for Writ of Certiorari.

B. The lower court's ruling does not raise question 1 presented by Appellant

The Petitioner Landon raises the question of whether the Internal Revenue Service can convey valid, legal real property title via a Tax Deed, to a third party without observing notice requirements pursuant to 26 U.S.C. Sec. 6335(a) and (b). This question was not an issue before the lower courts. This issue may have been proper against the Internal Revenue Service in federal court, which Petitioner Landon has failed to pursue since 1994.

C. The lower court's ruling does not raise question 2 presented by Appellant

The Petitioner Landon raises the question whether the IRS can convey valid, legal real property title via Tax Deed without personal written approval of an IRS District Director or Assistant District Director pursuant to 26 U.S.C. Sec. 6334(a)(13) and (e). Again, this is an issue Petitioner Landon should have pursued against the IRS in federal court back in 1994. Whether the IRS provided proper notice to Petitioner Landon prior to seizure and sale of his property in 1994 was not the proper issue before the trial court in a quiet title action and therefore, is not the proper issue in the question presented by Petitioner Landon.

D. The lower court's ruling does not raise question 3 presented by Appellant

The Petitioner Landon raises the question whether a 17 month time lapse between alleged seizure and sale of the subject properties violates the "as soon as practicable" requirement of 26 U.S.C. Sec. 6335 (a) and (b). Once again, this issue or question is only proper in federal court against the IRS by Petitioner Landon, which should have been pursued back in 1994 by Petitioner Landon when the property was seized by the IRS.

E. The lower court's ruling does not raise question 4 presented by Appellant

The Petitioner Landon raises the question whether the IRS can convey valid title to real property to a party,

if the IRS agent who sold the property did not possess the duly delegated authority to sell the property. This issue of the validity or legality of the actions of the Internal Revenue Service are proper only in federal court against the IRS. The Petitioner Landon in several lawsuits against Respondent Ralls has raised these same issues but has failed to file suit against the IRS in federal court. The IRS is not a party to the lawsuit that is the subject of this Petition.

F. The lower court's ruling does not raise question 5 presented by Appellant

The Petitioner Landon raises the question whether the act of the IRS selling Petitioner Landon's property without first actually seizing it is a violation of law and Petitioner Landon's right to due process. This issue of the validity or legality of the actions of the Internal Revenue Service is proper only in federal court against the IRS. The Petitioner Landon in several lawsuits against Respondent Ralls has raised these same issues but has failed to file suit against the IRS in federal court. Again, the IRS is not a party to the lawsuit that is the subject of this Petition.

G. The lower court's ruling does not raise question 6 presented by Appellant

The Petitioner Landon raises the question that if the IRS violated procedures (mandated by the federal statutes), and if he did not receive a trial by jury, were his 5th

and 14th Amendment due process rights violated? Pursuant to this question, Petitioner Landon raises the issue that the IRS violated his constitutional rights, not Respondent Ralls. However, the IRS was not a named party to the Petitioner Landon's complaint and the actions Petitioner Landon complains of existed prior to the quiet title action which was the issue before the lower court.

Further, Petitioner Landon was not denied a jury trial. The issue before the lower court was resolved by the parties' motions for summary judgment. Even if the case survived summary judgment, Chancery Courts have authority to quiet title or remove cloud from title to real property. See Trawick's Florida Practice and Procedure, pg. 546. Jury trials are not available for quiet title actions. See Florida Real Property Litigation, § 1.7. If the defendant to a quiet title action is in possession, then the defendant may demand a jury trial because ejectment becomes a cause of action to remove the defendant. See Florida Real Property Litigation, § 1.19. However, in the present case, Petitioner Landon was not in possession of the property and therefore, the quiet title action was one in equity and he was not entitled to a jury trial.

H. Summary

The issue that was before the trial court was whether Respondent Ralls was entitled to a Summary Judgment in his cross-claim/cross-complaint to quiet title to real property. The issue before the First District Court of Appeals for the State of Florida was whether the trial court was in

error in granting Respondent's Motion for Summary Judgment to Quiet Title.

Respondent Ralls was not required to prove that federal law was complied with by the IRS in his cross-complaint to quiet title to real property in which he received by a Tax Deed issued by the Internal Revenue Service. In support of Respondent Ralls' Motion for Summary Judgment, he submitted, among other documents, the United States Department of the Treasury Internal Revenue Service Record of Seizure and Sale and the Tax Deed in order to demonstrate the chain of title to the real property.

Summary judgment is proper if there is no genuine issue as to any material fact and the moving party is entitled to a judgment according to law. The law in the present case was that the legal effect of a tax deed is to extinguish and terminate by operation of law all prior existing titles resting in private ownership. *Sullivan v. Woodward*, 582 So.2d 31 (1st DCA 1991). Furthermore, tax deeds themselves are prima facie evidence of their own validity. *Sullivan*, 582 So.2d at 33.

Petitioner Landon failed to file any affidavits or supporting documents controverting Respondent Ralls' evidence and facts. After hearing argument from the parties at a duly noticed hearing, the trial court properly entered Summary Judgment in favor of Respondent Ralls as there was no genuine issue as to any material fact. The First District Court of Appeals for the State of Florida upheld the trial court's decision.

CONCLUSION

The Petitioner Landon has a history of filing non-meritorious lawsuits in state court against Respondent Ralls in which Petitioner Landon wishes to challenge the authority of the Internal Revenue Service to execute on property to satisfy a levy for unpaid federal income taxes. The Respondent Ralls has been forced to defend numerous lawsuits and has incurred substantial legal fees as a result. Again, in Petitioner Landon's writ of certiorari, he raises numerous questions which are not properly before this Court.

Neither the trial court's ruling nor the First District Court of Appeals' ruling, nor the record, raised the questions presented by the Petition. All of the questions presented by Petitioner Landon are issues that are proper against the Internal Revenue Service in federal court. However, Petitioner Landon has failed to initiate any action against the IRS in federal court even though the state courts have instructed him that it is his proper remedy. The First District Court of Appeals' ruling upheld the lower trial court's decision to grant Respondent Ralls' motion for summary judgment to quiet title. There is no issue of federal law or constitutional issues that were resolved by the lower courts.

Therefore, for all of the foregoing reasons, Respondent Ralls respectfully requests that this Honorable Court deny the Petition for Certiorari.

Respectfully submitted,

VINCENT J. WHIBBS, JR.
SUZANNE N. WHIBBS
Counsel of Record
WHIBBS, WHIBBS & JOHNSON, P.A.
105 E. Gregory Square
Pensacola, FL 32501
(850) 434-5395